IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

APPEAL FROM ORDER NO.965 OF 2007

IN

NOTICE OF MOTION NO. 231 OF 2007

IN

L.C. SUIT NO. 295 OF 2007

The Church of Our Lady of Health of
Valakanni & Anr. ..Appellants

Vs.

M/s. Prime Deelopers & Ar. ..Respondents

Mr. N.V.Walawalkar, Senior Counsel, a/w Mr. D.A. Joseph i/b. Mrs. David & Associates, Advocates, for the appellants.

Mr. Vijay Nair for Shri Prashant Kulkarni for respondent No.1.

Ms. Geeta Joglekar, Advocate, for respondent o.2.

CORAM: J.H.BHATIA,J.

DATE: 17th December,2007.

P.C.

1. Heard learned Counsel for the parties.

2. Admittedly, Notice of Motion is pending before the trial Court for final hearing and the defendants-respondents have to file reply therein. Taking into cosnideration the claim of the plaintiffs, the present Appeal may be disposed of by the following directions :-

> Pending the hearing and disposal of Notice of Motion, defendant No.2 - Municipal Corporation may issue occupacy certificate to defendant No.1 in pursuance of building plans bearing No.CE/7442/WS/AK dated 9th October, 2003 in respect of the building known as "Prime Mall" in case the construction is made as per Rules. However, the certificate shall not be granted in respect of the FSI of 35.48 sq. mtrs. with TDR benefits thereon in respect of the suit land if that FSI and TDR are found to be used in construction of the building.
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> Appeal stands disposed of accordingly.

3. All contentions of both the parties are kept open to be decided by the trial Court.

4. Any observations made by the trial Court and

even this order shall not influence the decision of Notice of Motion.

5. As the Appeal itself is disposed of, the C.A. No.1323 of 2007 does not survive and stands disposed of accordingly.

6. Parties to act on the authenticated copy of this Order.

(J.H.BHATIA,J.)